

Message Text

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ACTION EA-14

INFO OCT-01 ADP-00 SCS-03 SCA-01 SY-10 L-03 H-03 PRS-01

PA-03 USIA-15 CIAE-00 INR-10 NSAE-00 RSC-01 RSR-01

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P 141024Z AUG 73

FM AMEMBASSY MANILA

TO SECSTATE WASHDC PRIORITY 7321

C O N F I D E N T I A L MANILA 9328

E O 11652: GDS

TAGS: CASC, RP (LEHMAN, AUGUST MCCORMIC, JR.)

SUBJ: W/W: AUGUST MCCORMIC LEHMAN, JR.

REF: STATE 160312

1. EMBASSY UNABLE THUS FAR OFFICIALLY TO CONFIRM PRESS REPORTS THAT 31 PERSONS HAVE BEEN CHARGED WITH CONSPIRING KILL PRESIDENT MARCOS. HOWEVER, BEHAVIOR OF PHIL ARMY OFFICER WITH WHOM EMBASSY HAS DEALT ON LEHMAN CASE WOULD SEEM LEND CREDENCE TO STORY, AND WE HAVE BEEN TOLD THAT DECISION TAKEN TO FILE CHARGES WHETHER OR NOT IN INDIVIDUAL CASE FILING HAS YET OCCURRED.

2. ON MORNING AUG 14, EMBOFF PHONED COL. UY OF PHIL ARMY TO ASK WHETHER AFP STORY CORRECT AND WHETHER LEHMAN HAD BEEN SERVED WITH FORMAL CHARGE OR CHARGES. UY REFUSED DISCUSS ANY ASPECT OF LEHMAN CASE OR ANSWER ANY QUESTIONS. TO EVERY QUERY PROPOUNDED BY EMBOFF, UY STATED QUESTION SHOULD BE PUT TO SECY OF NATL DEFENSE. HE ALSO DECLINED TO ASSIST EMBOFF IN ARRANGING CONSULAR VISIT WITH LEHMAN AND SAID REQUEST SHOULD BE DIRECTED TO CAPT ARCIBAL OF FORT BONIFACIO MILITARY POLICE.

3. ARCIBAL CLAIMED HE UNABLE PERSONALLY AUTHORIZE CONSULAR VISIT BUT WOULD SEEK PERMISSION FROM HIGHER AUTHORITIES FORTHWITH. EMBOFF GOT IMPRESSION THAT VISIT WOULD PROBABLY BE AUTHORIZED FOR MORNING AUG 15. SUBSEQUENTLY, HOWEVER, ARCIBAL PHONED TO SAY
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VISIT SCHEDULED FOR SATURDAY, AUG 18. WE NOT SATISFIED WITH THIS

DELAY AND ARE GOING UP CHAIN OF COMMAND TO GET AUTHORIZATION FOR CONSULAR VISIT AUG 15. WILL REPORT OUTCOME OUR EFFORTS. WHENEVER VISIT TAKES PLACE WE WILL FIND OUT FROM LEHMAN WHAT HE HAS BEEN TOLD AND WHETHER WRITTEN COPY OF CHARGE OR CHARGES HAS BEEN FURNISHED. WE WILL ALSO STRONGLY URGE HE ENGAGE LEGAL COUNSEL.

4. UNTIL WORDING OF CHARGE OR CHARGES IS KNOWN, WOULD PREFER NOT TO SPECULATE ON USE OF WORD "CONSPIRACY" SINCE THIS MAY IN END TURN OUT TO BE WORD INSERTED BY WIRE SERVICE REPORTER. IF LEHMAN IN DARD RE FORMAL CHARGES AND REPORTED FORTHCOMING TRIAL, EMBASSY WILL ADDRESS QUERIES TO DEPT NATL DEFENSE.

5. LEHMAN'S FATHER PHONED EMBOFF MORNING AUG 14 AFTER AFP REPORT APPEARED IN HIS NASHVILLE NEWSPAPER. HE ASSURED EMBOFF THAT HE WOULD PAY COSTS OF LEGAL COUNSEL IF HIS SON WOULD ACCEPT SUCH COUNSEL. IN THIS CONNECTION, EMBASSY FORESEES NO INSUPERABLE DIFFICULTY IN OBTAINING LAWYER ALTHOUGH SOME MAY BEG OFF WHEN APPROACHED. SEE NO REAL UTILITY IN SENDING US LAWYER TO ASSIST IN HIS DEFENSE.

6. MILITARY TRIBUNALS ARE COMPOSED OF A PANEL CONSISTING OF FIVE MEMBERS OF AFP, ONE OF WHOM MUST BE A FIELD GRADE JUDGE ADVOCATE. TRIAL AND DEFENSE COUNSEL ARE APPOINTED FROM JUDGE ADVOCATE'S DEPARTMENT. HOWEVER, ACCUSED HAS RIGHT TO RETAIN COUNSEL OF HIS OWN CHOICE AND MAY ELECT TO RETAIN OR EXCUSE APPOINTED DEFENSE COUNSEL. CHALLENGES FOR CAUSE PERMITTED AND EITHER SUSTAINED OR DENIED BY MAJORITY OF PANEL. PROCEDURE REQUIRES THAT ACCUSED BE INFORMED OF CHARGES AT LEAST THREE RPT THREE DAYS IN ADVANCE OF INITIAL HEARING. ACCUSED AND HIS COUNSEL SHOULD BE PRESENT AT ALL HEARINGS. RULES OF EVIDENCE CONTAINED IN PHIL MANUAL FOR COURTS MARTIAL (SIMILAR TO US MCM) IS TO BE USED. ACCUSED HAS RIGHT TO PRODUCE EVIDENCE IN HIS OWN DEFENSE, TO HAVE COMPULSORY PROCESS TO OBTAIN EVIDENCE AND TO CROSS EXAMINE PROSECUTION WITNESSES. IN THEORY, ALL OTHER RIGHTS ACCORDED BY PHIL CONSTITUTION AVAILABLE INCLUDING RIGHT AGAINST SELF-INCRIMINATION. IN ORDER TO CONVICT IF OFFENSE CARRIES MANDATORY DEATH PENALTY, ALL MEMBERS MUST CONCUR, OTHERWISE 2/3 OF PANEL. TO DECIDE SENTENCE, IF DEATH, ALL MEMBERS; LIFE IMPRISONMENT, 3/4 MEMBERS; AND ALL OTHER SENTENCES 2/3 OF MEMBERS OF PANEL. A VERBATIM RECORD SHALL BE MADE. NO FORMAL APPEAL AS SUCH AVAILABLE. RECORD REVIEW BY JAG, AFP FOR ADVICE AND RECOMMENDATION TO CHIEF OF STAFF AFP. IF SENTENCE INVOLVED IS DEATH OR OVER 20

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YEARS CONFINEMENT, CASE REFERRED FIRST TO JUDGE ADVOCATE BOARD OF REVIEW TO DETERMINE LEGAL SUFFICIENCY AND THEN TO THE CHIEF OF STAFF FOR APPROPRIATE ACTION. AFTER WHICH REFERRED TO THE PRESIDENT FOR FINAL ACTION. CHIEF OF STAFF OR PRESIDENT MAY INCREASE, DECREASE, OR VOID SENTENCE.

7. IN FACE OF INABILITY OBTAIN FACTUAL ACCOUNT AS IT CONCERNS LEHMAN OR TO SECURE ASSURANCE OF PROMPT PERMISSION FOR CONSULAR VISIT,

DCM PHONED UNDERSECRETARY COLLANTES, DFA, TO SEEK INFORMATION AND EXPRESS CONCERN. COLLENATES PROFESSED TO BE UNAWARE THAT STORY HAD BROKEN INPRESS. HE FIRST SAID THAT IT WAS CORRECT THAT CHARGES FILED BUT CHANGED THAT TO "ARE BEING FILED" AND WAS UNABLE TO BE PRECISE WITH RESPECT TO LEHMAN. HE RECALLED HAVING INDICATED PREVIOUSLY A DECISION TOKEN TO BRING CHARGES, WHICH IS TRUE ALTHOUGH NO TIMING HAD BEEN SUGGESTED. COLLANTES UNDERTOOK TO DETERMINE WHETHER IN LEHMAN'S CASE FORMAL CHARGE HAS INDEED BEEN FILED AND IF SO THE NATURE OF CHARGE(S), FOLLOWING ON DCM'S STATEMENT OF PUZZLEMENT OVER REFERENCE TO "CONSPIRACY." DCM PRESSED FOR COLLANTE'S HELP IN (A) INSURING OPPORTUNITY FOR CONSULAR CONTACT TOMORROW AND (B) AS FIRST STEP CONVEYING TO US INFORMATION AS TO WHETHER LEHMAN HAS BEEN PROVIDED ACCESS TO AND HAS RETAINED COUNSEL.

8. WILL REPORT FURTHER TOMORROW AND ADDRESS SPECULATIVE QUESTIONS AS TO GOP INTENT AS INFORMATION BEGINS TO BE AVAILABLE.
SULLIVAN

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